

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 28, 2025

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Richard C. Chism, Director *RCC*
Office of Air

Docket No.: 2025-0015-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 25, Environmental Testing Laboratory Accreditation and Certification
Laboratory Accreditation Fee Increase
Rule Project No. 2025-016-025-AI

Background and reason(s) for the rulemaking:

The Laboratory Accreditation Program (Program) offers primary and secondary accreditation to public and private environmental laboratories throughout Texas, as well as other states. The current fee structure, codified in 30 Texas Administrative Code (TAC) Chapter 25, has been in place since 2011. Due to inflation, the Program will encounter a budgetary shortfall by the end of fiscal year (FY) 2026 if fees are not increased. The addition of per and poly-fluoroalkyl substances (PFAS) as a field of accreditation requires a new fee category be added to the rules.

Some laboratories with more than one location have opted to utilize the noncontiguous laboratory option for accreditation, which allows the laboratory to pay fees as a single laboratory, even though on-site assessments are required for each location. This creates a financial burden on the Program as fees do not cover the cost of traveling to multiple locations to conduct assessments.

Subchapter C of 30 TAC Chapter 25 addresses certification of drinking water laboratories. The Program only offers accreditation to drinking water laboratories, not certification.

Scope of the rulemaking:

The rulemaking would increase fees to cover the cost of Program administration, including annual increases based upon the consumer price index (CPI) starting in FY 2027, add a field of accreditation to cover PFAS, amend the criteria in 30 TAC §25.12(b) for noncontiguous laboratories to be accredited as a single entity, and repeal Subchapter C related to certification of drinking water laboratories.

A.) Summary of what the rulemaking would do:

The proposed rulemaking would amend 30 TAC Chapter 25, Subchapter B to increase fees including an annual CPI increase, add fields of accreditation for PFAS, amend rule language associated with noncontiguous laboratories, and repeal 30 TAC Chapter 25, Subchapter C.

B.) Scope required by federal regulations or state statutes:

Texas Water Code (TWC), Chapter 5 Subchapter R provides the commission the authority to create the accreditation program. As per 30 TAC §25.1: "Accreditation is voluntary; however, the commission may accept environmental testing laboratory data and analyses for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analyses are prepared by an environmental testing laboratory accredited by the commission under

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this chapter, except as provided in §25.6 of this title (relating to Conditions Under Which the Commission May Accept Analytical Data).” The proposed rulemaking would ensure the program remains financially solvent and amend and repeal rule language for clarification.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommend the addition of fees for the accreditation of laboratories testing for PFAS, amending language related to defining noncontiguous laboratories, and the repeal of Subchapter C, to remove wording related to certification of drinking water laboratories.

Statutory authority:

TWC, Chapter 5 Subchapter R provides the commission the authority to create the accreditation program and requires the agency to establish a schedule of reasonable accreditation fees to cover the costs of the Program.

Effect on the:

A.) Regulated community:

Laboratories would be required to pay increased fees when they apply for accreditation or an accreditation renewal after September 1, 2025.

B.) Public:

The fee increase is not expected to affect the public.

C.) Agency programs:

The fee increase is not expected to affect agency programs, other than providing sufficient funding for the continuation of the Laboratory Accreditation Program.

Stakeholder meetings:

Stakeholder meetings related to this rulemaking are not anticipated; however, a rule public hearing would be held during the comment period in Austin. Fee increases would also be communicated to laboratories accredited by the Program via presentation at TCEQ’s Environmental Trade Fair and Conference in June 2025, as well as via email to the currently accredited laboratories once the fee schedule has been approved.

Public Involvement Plan

Yes

Alternative Language Requirements

Yes, Spanish

Potential controversial concerns and legislative interest:

Legislative interest or issues with the public are not anticipated. Accredited laboratories may have concerns regarding the increased fees.

Would this rulemaking affect any current policies or require development of new policies?

This rulemaking would not require the development of new policies and would only affect the fee schedule for the Laboratory Accreditation Program which are codified in the Texas Administrative Code.

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the predicted shortfall for FY 2026 would impact the ability of the Program to perform the following functions: conduct assessments of accredited laboratories as required by the National Environmental Laboratory Accreditation Program, pay third party contractors to perform required assessments, and pay for required training for the Program's assessors. Failure to perform these key functions would impact the commission's ability to accept environmental laboratory data for decision-making and would jeopardize the TCEQ's standing as an accrediting body.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: April 18, 2025

Anticipated *Texas Register* publication date: May 2, 2025

Anticipated public hearing date: June 5, 2025

Anticipated public comment period: May 2, 2025 - June 5, 2025

Anticipated adoption date: August 28, 2025

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